

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

PAUL RAY PHILPOT,

Plaintiff,

v.

COMMISSIONER and SOCIAL  
SECURITY ADMINISTRATION,

Defendants.

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Case No. 6:19-CV-193-JDK-JDL

**ORDER ADOPTING REPORT AND RECOMMENDATION  
OF UNITED STATES MAGISTRATE JUDGE**

Plaintiff Paul Ray Philpot initiated this civil action on May 3, 2019. Docket No. 1. The case was referred to United States Magistrate Judge John D. Love, who issued a Report and Recommendation recommending that the case be dismissed without prejudice for failure to obey a court order and for failure to prosecute. Docket No. 5.


On May 7, 2019, Plaintiff filed a motion for leave to proceed *in forma pauperis* (“IFP”) in this matter. Docket No. 3. Plaintiff’s motion failed to provide the Court with the requisite information to rule on his IFP motion and instead stated that Plaintiff is preparing an affidavit to submit in support of Plaintiff’s motion to proceed IFP. *Id.* Having failed to timely provide an affidavit in support of the motion, the Court ordered Plaintiff to file the affidavit by no later than May 17, 2019. Docket No. 4. Plaintiff’s counsel received the Court’s order via the Court’s CM/ECF electronic filing system. Plaintiff failed to timely submit the affidavit in accordance with the Court’s order. Therefore, on May 23, 2019, the Magistrate Judge issued his Report and Recommendation (Docket No. 5), recommending that this case be dismissed without prejudice for failure to comply with the Court’s Order or timely file the affidavit. The Report and

Recommendation informed Plaintiff of his rights to object to the Report and Recommendation within 14 days, and further informed him that a failure to timely object shall bar “that party from de novo review by the district judge of those findings, conclusions and recommendations and, except on grounds of plain error, from appellate review of unobjected-to factual findings and legal conclusions accepted and adopted by the district court.” Docket No. 5, at 2 (citing *Douglass v. United States Auto. Ass’n*, 79 F.3d 1415, 1430 (5th Cir. 1996)). Since the service of the Report and Recommendation on May 23, 2019, Plaintiff has not filed objections and the prescribed time period for doing so has passed.

A district court may dismiss an action for the failure of a litigant to prosecute or to comply with any order of the court. See *McCullough v. Lynaugh*, 835 F.2d 1126, 1127 (5th Cir. 1988) (“The court possesses the inherent authority to dismiss the action *sua sponte*, without motion by a defendant.”); FED. R. CIV. P. 41(b). Here, Plaintiff’s failure to prosecute his case stems from his failure to respond to the Court’s order or timely file the affidavit in support of his IFP motion. Indeed, Plaintiff has not had any communication with the Court since the filing of his IFP motion on May 7, 2019. Plaintiff has now failed to timely submit an affidavit in support of his IFP motion, failed to comply with an order of the Court, and failed to object to the recommendation that this case be dismissed without prejudice for failure to prosecute. As such, the Court agrees with the Magistrate Judge that this case should be dismissed without prejudice for failure to prosecute.

Therefore, the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly **ORDERED** that the complaint is hereby **DISMISSED WITHOUT PREJUDICE**.

So **ORDERED** and **SIGNED** this **12th** day of **June, 2019**.

  
JEREMY D. KERNODLE  
UNITED STATES DISTRICT JUDGE